In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No.16404 of 2007
Date of Decision: 18.10.2007

HUDA Contractors Association, Panchkula …Petitioner

Versus

State of Haryana and others. …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mrs. Sangita Dhanda, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing condition No. 1 in Memo No. 7132 dated 28.5.2007 (P-1) whereby respondent No. 4 has directed all the Superintending Engineers to deduct cess @ 1% to 2% of gross construction cost from contractors for the work executed after 2.11.2006 especially from those bills which have been submitted after the execution of works of those Demand Notice Inviting tenders in which condition No. 22 was not there. Further prayers for issuing a direction to respondents No. 5and 6 to 8 not to deduct 1% cess from the already undertaken and executed works which have already been completed and to refund the amount of entire money to the members of the association which they had deducted in the garb of 1% cess from the already undertaken and executed works. A prayer for issuing a direction to the respondent to decide the legal notice dated 11.8.2007(P-4) has also been made.

We have heard the learned counsel for the petitioner at some length and perused the paper book.

Before disposing of this writ petition we would refer to the views of Hon'ble the Supreme Court in the case of **Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344**. In paras 38 and 39 of the judgment it has been required that whenever notice under Section 80 C.P.C. or under any similar provision are sent then it is mandatory on the part of State or Central Government or other authorities to send reply to such notice. It is well settled that before seeking a direction or a writ of mandamus, a demand justice notice is required to be served on the respondents as has been done in the present case. The petitioner-association has sent a legal notice dated 11.8.2007 (P-4) to which no reply is stated to have been received. It has also been observed by Hon'ble the Supreme Court that in cases where such like representations has not been replied then cost is required to be imposed. Therefore, without going into the merits of the case, we dispose of the writ petition at this stage with a direction to the respondents to take a decision on the legal notice dated 11.8.2007 (P-4) by passing a speaking order within a period of two months from the date of receipt of a certified copy of this order.

Petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 18, 2007
Paramjit